

MANJUL SRIVASTAVA

v.

GOVT. OF U.P. & ORS.

(Civil Appeal No. 1758-1759 of 2002)

AUGUST 29, 2008

[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

*Monopolies and Restrictive Trade Practices Act, 1969 – Unfair trade practice – Allotment of plot – Reservation letter that plot reserved in name of applicant – Deposit of entire amount by applicant within the stipulated period – However, order of cancellation of reservation of plot in favour of applicant after nine years and entire amount to be refunded with 5% interest by the Development Authority – Challenge to, alleging unfair trade practice and direction sought to allot another plot or in alternative 20% interest on deposited amount with compensation – Dismissed by MRTP Commission – Justification of – Held: Justified – Amount for reservation of plot would not lead to inference of registration by itself guaranteeing allotment of specific plot to applicant – Reading clauses of the Brochure as also Reservation Letter clearly shows that plot was reserved for applicant subject to holding of lottery for specific plots for allotment – Applicant was unsuccessful in draw of lots, thus, would not acquire any legal right to such plot – It would only be entitled to refund of amount deposited – On facts, Authority directed to refund the amount deposited with 18 % interest and not 5% interest.*

**The appellant applied for allotment of residential plot in Ghaziabad Development Area under the Housing Scheme of the year 1988. It deposited the registration fees. The GDA issued reservation letter to the appellant reserving plot category D in her name. It was stipulated that the possession of the plot would be given in 1991 and draw for specific plot number would be held**

- A separately. In pursuance to the letter, appellant deposited the entire balance amount within the stipulated period. After nine years, the appellant was informed by registered letter that she was not allotted a plot and would be refunded the deposited amount with 5% interest.
- B Appellant filed application before MRTP Commission alleging that the cancellation of allotment by GDA was arbitrary, unfair and illegal, thus, amounted to 'unfair trade practice' under the Monopolies and Restrictive Trade Practices Act, 1969. It sought direction to the respondent-
- C GDA to allot another plot or in the alternative pay 20% interest on the deposited amount for the entire period as also compensation. Appellant filed another application that after reservation of the plot, a draw was to be held only for allotting the specific plot to such persons and
- D the same was not held. During pendency of the application, GDA issued cheque to the appellant for the entire amount with 5% interest. Appellant received the cheque under protest but subsequently returned the entire amount by drawing another cheque in favour of GDA. The Commission rejected the application holding
- E that the appellant not being "allottee" from the result of the draw was not entitled to any plot thus, charge of "unfair trade practice" against the GDA could not be established; and that under clause 9 of the brochure, the appellant was only entitled to the refund of the deposited amount
- F with 5 % interest. Aggrieved appellant filed Review application which was dismissed. Hence the present appeals.

Partly allowing the appeals, the Court

- G HELD: 1.1 The Commission was justified in rejecting the claim of the appellant. The plot in question was a category of plot (Category D) which was only reserved for the appellant but from the Clauses of the Brochure, it would be clear that the final allotment was to be made as
- H regards specific plots only after the lottery related to such

allotment was made. In the draw of lottery the appellant was unsuccessful as her name did not figure in the same. The 'plot reserved' and a 'plot allotted' are different aspects altogether. Clause 9.10 of the Brochure of the GDA related to the distribution of plots which clearly stipulates that the candidates who were not allotted any plot, would be entitled to get refund of the entire amount deposited with the GDA and also the reserved amount with interest at the rate of 5%, if such amount was kept with the GDA for less than one year. Clause 9.50 clearly shows that an applicant who is unsuccessful in the draw of lots would only be entitled to the refund of registration amount and such process of refunding the registration amount shall start only after one month of the draw of lots are finalized. Therefore, reading the Clauses in the brochure, it is evident that since the appellant was not allotted any plot and only a plot was reserved subject to holding of a lottery for the specific plots for allotment, the appellant would not acquire any legal right to such plot, only she would be entitled to get refund of her amount deposited with the GDA. [Para 12] [913- A to G]

1.2 A clear reading of the clauses of the Brochure, it would be evident that two separate parts of the clauses have been indicated in the brochure. The first part was with regard to the reservation amount and second part was with regard to allotment of plot if an applicant was successful in the draw of lots. The reservation letter issued by the GDA dated 10th of February, 1989 to the appellant was regarding reservation of Plot-D in Govindpuram for the appellant. It would also be evident from the said letter that certain clauses were inserted by the GDA if an applicant was defaulter in payment of the balance amount. It was made clear in the said letter that the allotment was subject to conditions "Draw for specific Plot number shall be held separately". Therefore, it must be inferred that no plot was allotted to the appellant since

- A allotment of specific plot could not be made because of failure on the part of the appellant to succeed in the draw of lots. A reading of letter dated 10th of February, 1989 and also the different clauses in the brochure, the appellant could not have acquired any legal right for allotment of a plot until and unless he could be found to be successful in the draw of lots. Therefore, it was an amount for reservation of Category-D plot, which by no means, would lead to the inference of registration by itself guaranteeing the allotment of a specific plot to the appellant. [Para 13] [913 G-H 914 A-G]
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*Saurabh Prakash vs. DLF Universal Ltd.* 2007 (1) SCC 228 – distinguished.

- 1.3 Before the Commission, the GDA, on affidavit, asserted that no plot was available for allotment to the appellant in the Housing Scheme, thus, it would be practically impossible to allot any plot, even if it is held that allotment of plot was made by GDA in favour of the appellant. [Para 14] [915-A-B]
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- 1.4 The appellant should be allowed to get refund from the GDA the entire sum with interest at the rate of 18% not at the rate of 5% as it is found from the brochure itself, it would be clear that in the event, the appellant could not deposit the entire amount after the allotment is made within certain time, 18% interest shall be levied on the appellant. The appellant deposited the entire amount as directed by the GDA in the year 1989 and the order of cancellation of reservation of a plot in favour of the appellant was made after more than seven years and, therefore, the respondent was liable to pay interest not at the rate of 5% but at the rate of 18%. The order of the Commission holding that there was no “unfair trade practice”, is upheld but in the facts and circumstances of the case that the GDA had utilized the entire amount of the appellant for their own purpose till they had refunded
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the amount to the appellant and the respondent is directed to refund the money already deposited with the GDA with interest at the rate of 18 % and not 5%. [Para 14] [915-C-G]

*Alok Shanker Pandey vs. Union of India and Ors. 2007 (3) SCC 545* – referred to.

1.4 The Commission was also justified in rejecting the claim of the appellant for allotment of a plot as the entire amount of refund with 5% interest was initially accepted by the appellant, but subsequently, she returned the like amount to the GDA. Having accepted the amount and encashed the same, it is no longer open to the appellant to turn around and claim allotment of plot from the GDA. [Para 15] [915-H 916-A-B]

#### Case Law Reference

2007 (1) SCC 228                      Distinguished.                      13

2007 (3) SCC 545                      Referred to.                      14

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1758-1759 of 2002

From the final Judgment and Order dated 9.5.2001 and 7.12.2001 of the Monopolies and Restrictive Trade Practice Commission, New Delhi in C.A. No. 154 of 1998 and R.A. No. 37 of 2001 in C.A. No. 154 of 1998 respectively

K. Rajeev for the Appellant.

R.K. Gupta, G.V. Rao, Rakesh Uttamechandra Upadhyay, Washid Hussain and ravi Prakash Mehrotra for the Respondents.

The Judgment of the Court was delivered by

**TARUN CHATTERJEE, J** 1. These two appeals at the instance of Mrs. Manjul Srivastava (appellant herein) have been filed against the orders dated 9<sup>th</sup> of May, 2001 and 7<sup>th</sup> of December, 2001 passed by the Monopolies and Restrictive Trade Practices Commission, New Delhi (in short “the

- A Commission") in C.A. No. 154 of 1998 and R.A. No. 37 of 2001, which also arose out of C.A. No. 154 of 1998, whereby the Commission had held that the Ghaziabad Development Authority (in short "the GDA") had not resorted to any "unfair trade practice" inasmuch as the appellant was unsuccessful in the draw for allotment of a plot in Govindpuram area of District Ghaziabad in the State of Uttar Pradesh and, therefore, she could not be termed as an "allottee" of the residential plot in that area.

2. The facts leading to the filing of these appeals, as emerged from the complaint filed by the appellant before the Commission, may be narrated in a nutshell as under:-

- The dispute in these appeals pertains to allotment of a certain plot of land by the GDA in its Govindpuram Housing Scheme of the year 1988. The appellant applied for allotment of a residential plot pursuant to an advertisement of the GDA after depositing registration fees for an amount of Rs. 7210/- on 10<sup>th</sup> of February, 1989. The GDA issued a Reservation Letter to the appellant reserving plot Category – D in her name and further requiring her to deposit the entire balance amount of Rs. 62,240/- towards the estimated cost. In the Reservation Letter, it was stipulated that if the payment was not made within three months after it was due along with penal interest, if any, the allotment would be treated as cancelled without notice. It was further stipulated that the possession of the plot would be given in 1991 and that the draw for specific plot number would be held separately. On 5<sup>th</sup> of April, 1989, the appellant deposited the entire balance amount of Rs. 62,240/- with the GDA but she was not put in possession of any plot whatsoever.

3. After the lapse of almost nine years, more particularly on 1<sup>st</sup> of October, 1997, the appellant received a Registered Letter from the GDA informing her that she had not been allotted a plot in the Scheme and that the amount deposited by her with the GDA would be refunded with 5% interest. However, no reason for not giving possession of the plot, already reserved in the name of the appellant, was given.

4. Feeling aggrieved by this action on the part of the GDA of not allotting a plot in her name, although the entire amount was deposited by the appellant, the appellant filed an application before the Commission, which came to be registered as C.A. No. 154 of 1998 alleging that the cancellation of the allotment by the GDA was not only arbitrary but also unfair and illegal, therefore, it amounted to "unfair trade practice" under the Act. Accordingly, the appellant sought for a direction to the respondent to allot another plot to her or in the alternative, to pay with interest at the rate of 20% on the entire amount for the entire period and also for a direction to pay compensation to her. On 23<sup>rd</sup> of February, 2000, the GDA filed its reply to the above application contending *inter alia* that since the appellant was unsuccessful in the draw of lots, no allotment could be made in her name. It was further stated in defence that since no plot in the Govindpuram Housing Scheme was available, allotment of plot was also not possible and that the GDA had given a public notice to the appellant to collect the entire amount deposited with interest at the rate of 5% in a local widely circulated newspaper "Hindustan Times". Accordingly, GDA prayed for dismissal of the application of the appellant. On 30<sup>th</sup> of March, 1998, a supplementary application was filed by the appellant by which the appellant had brought to the notice of the Commission that after the reservation of the plot, a draw was to be held only for allotting the specific plot, namely corner plot, road facing, park facing etc. and that no draw was to be held for allotment for those persons for whom a plot had already been reserved.

5. During the pendency of the application before the Commission, the GDA had issued a Cheque for Rs. 97,944/- to the appellant towards the amount deposited by her along with interest at the rate of 5%. The appellant received the said cheque under protest, but subsequently returned the entire amount by drawing another cheque for the like amount in favour of the GDA.

6. The Commission, by its Order dated 9<sup>th</sup> of May, 2001, rejected the application filed by the appellant primarily on the

- A ground that the appellant not being an "allottee" from the result of the draw held, she was not entitled to any plot, as claimed, and, therefore, the charge of "unfair trade practice" against the GDA/respondent could not be established. It was further held that under Clause 9 of the brochure, the appellant was only
- B entitled to the refund of the deposited amount with interest at the rate of 5%.

7. Feeling aggrieved by this decision of the Commission, the appellant also filed a Review Application before the Commission, which came to be registered as R.A. No. 27 of

C 2001, which was also rejected by the Commission. Accordingly, being aggrieved and dissatisfied with the Orders of the Commission, the appellant has filed these two appeals in this Court, which was heard in presence of the learned counsel for the parties.

- D 8. We have heard the learned counsel for the parties and examined the impugned orders of the Commission and also other materials on record including the relevant clauses appearing in a brochure pertaining to the Govindpuram Housing Scheme in question. The only question that needs to be decided
- E in these appeals is whether the Commission was justified in rejecting the application of the appellant by the Orders impugned in these appeals. Before we answer the question posed before us, it would be expedient at this stage to record the findings of the Commission while rejecting the application of the appellant.
- F The findings are to the following effect :-

*"Being not an allottee as the result of the draw held, the applicant has no legal right to the plot as claimed. Therefore, the charge of unfair trade practices against the respondent is not established. At best, the applicant is entitled to the refund of the amount deposited, which has since been received by it along with the interest at the rate of 5%. In the result, the compensation application stands dismissed. No order as to costs in the facts and circumstances of the case."*

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9. Keeping the aforesaid findings of the Commission in mind, let us now proceed with the respective submissions advanced by the learned counsel for the parties. The learned counsel appearing for the appellant vehemently argued that the appellant having made full and final payment to the GDA well within the stipulated period as directed by it and a plot was reserved for her which was to be given to her in the year 1991 as per Clause 3 of the reservation letter dated 10<sup>th</sup> of February, 1989 issued by the GDA, the Commission was in error in holding that the appellant was not an allottee of the plot because she had failed in the draw inasmuch as a plot had already been reserved in the name of the appellant and the draw, if any, was only restricted in allotment of specific plot numbers. The learned counsel, therefore, submitted that the GDA, having indulged in an "unfair trade practice", the Orders of the Commission deserved to be set aside.

10. The submissions of the learned counsel for the appellant were hotly contested by the learned senior counsel appearing on behalf of the GDA. Mr. Vijay Hansaria, learned senior counsel appearing for the respondent/GDA contended that since the appellant was not successful in the draw of lots and, therefore, the GDA was, within its jurisdiction, not to allot any plot to the appellant. It was further contended that the GDA had already refunded the amount of Rs.97,944/- to the appellant towards the amount deposited by the appellant along with interest at the rate of 5% and that amount was accepted by the appellant, therefore, it was no longer open to the appellant to challenge the Order of Cancellation after having accepted the amount. Although, the said amount of Rs.97,944/- was returned to the GDA subsequently, it was further argued that since the letter of the GDA dated 10<sup>th</sup> of February, 1989 was only a Reservation Letter which was issued pursuant to the application made by the appellant, no allotment of any plot was made in favour of the appellant on account of failure in the draw of lottery, the question of canceling the reservation of a plot alleged to have already made in favour of the appellant could not arise at

A all. Accordingly, Mr. Hansaria, learned senior counsel appearing for the GDA sought for dismissal of the appeals and submitted that the Orders passed by the Commission were fully justified.

B 11. Before we proceed further, it is necessary to reproduce some of the relevant clauses from the brochure, which should be required for the proper appreciation of the controversies involved. Clause 9 of the Brochure is produced as under :-

#### "9.00 UNSUCCESSFUL APPLICANTS

C 9.10 *Those applicants, who have not been allotted/ reserved plots houses, will be returned their registration amount without interest if the period of deposit of such money with GDA is less than one year.*

D 9.20 *However, if the period of deposit is more than one year, 5% simple interest shall be paid for the entire period of deposit.*

E 9.30 *For the purpose of calculation of period of deposit the month of deposit & refund shall not be counted. Any period after the date of start of refund of registration amount of unsuccessful applicants, shall not be counted for purpose of calculation of "period of deposit".*

F 9.40 *The registration amount shall be refunded to the unsuccessful applicants by Vijaya Bank 84, Navyug Market Ghaziabad directly.*

9.50 *The refund of registration amount to unsuccessful applicant shall be started after one month of the draw.*

G 9.60 *Unsuccessful applicants should contact personally or by post only the Vijaya Bank 84, Navyug Market, Ghaziabad for refund of registration amount. They are required to surrender the original copy of challan from (Applicant's copy) duly signed on the reverse to the Bank.*

H 9.70 *G DA itself does not entertain any applicants directly for refund of registration amount."*

12. In our view, the Commission was justified in rejecting the claim of the appellant. The plot in question was a category of plot (Category D) which was only reserved for the appellant but from the Clauses, as mentioned above, it would be clear that the final allotment was to be made as regards specific plots only after the lottery related to such allotment was made. It is beyond dispute that in the draw of lottery, the appellant was unsuccessful as her name did not figure in the same. It could not be disputed that 'plot reserved' and a 'plot allotted' are different aspects altogether. A reading of the Clauses, as indicated above, would clearly show that a plot was reserved for her subject to the final allotment after the lottery related to such allotment was made. It would be evident that Clause 9.10 of the Brochure of the GDA related to the distribution of plots which clearly stipulates that the candidates who were not allotted any plot, would be entitled to get refund of the entire amount deposited with the GDA and also the reserved amount with interest at the rate of 5%, if such amount was kept with the GDA for less than one year. Clause 9.50 deals with refund of registration amount to unsuccessful applicant which would start after one month of the draw. This Clause clearly indicates that the refund of registration amount to unsuccessful applicant shall start after one month of the draw which would clearly show that an applicant who is unsuccessful in the draw of lots would only be entitled to the refund of registration amount and such process of refunding the registration amount shall start only after the draw of lots are finalized. Therefore, reading the aforesaid Clauses in the brochure, it is evident that since the appellant was not allotted any plot and only a plot was reserved subject to holding of a lottery for the specific plots for allotment, the appellant would not acquire any legal right to such plot, only she would be entitled to get refund of her amount deposited with the GDA.

13. In view of our discussions made hereinabove and a clear reading of the clauses of the Brochure, it would be evident that two separate parts of the clauses have been indicated in

- A the brochure. The first part was with regard to the reservation amount and second part was with regard to allotment of plot if an applicant was successful in the draw of lots. In this connection, the letter issued by the GDA dated 10<sup>th</sup> of February, 1989 may be looked into. The subject indicated in the said letter to the
- B appellant was regarding reservation of Plot-D in Govindpuram: then from the letter itself it would also be evident that a plot was reserved for the appellant. It would also be evident from the said letter that certain clauses were inserted by the GDA if an applicant was defaulter in payment of the balance amount. In
- C this connection, Clause 5 of the letter dated 10<sup>th</sup> of February, 1989 needs reproduction :-

- "Final cost of the plot shall be determined after taking into account its specific location in terms of park-facing, corner, major road facing etc. for which extra rates are prescribed to be charged which will be intimated after allotment of specific plot."*
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- It was made clear in the said letter that the allotment was subject to conditions "Draw for specific Plot number shall be held separately". Therefore, it must be inferred that no plot was
- E allotted to the appellant since allotment of specific plot could not be made because of failure on the part of the appellant to succeed in the draw of lots. In our view, a reading of this letter dated 10<sup>th</sup> of February, 1989 and also the different clauses, as already indicated in the brochure, we have no hesitation in
- F agreeing with the Commission that the appellant could not have acquired any legal right for allotment of a plot until and unless he could be found to be successful in the draw of lots. Therefore, in our view, it was an amount for reservation of Category-D plot, which by no means, would lead to the inference of registration
- G by itself guaranteeing the allotment of a specific plot to the appellant. In this connection, a decision of this Court in *Saurabh Prakash vs. DLF Universal Ltd.* [(2007) 1 SCC 228] was cited at the Bar. In our view, the said decision of this Court is not applicable to the present case. In any view of the matter, in the
- H peculiar facts and circumstances of that case, this Court also

expressed that the said decision shall not be treated to be a precedent. A

14. Before the Commission, the GDA, on affidavit, asserted that no plot was available for allotment to the appellant in the Govindpuram Housing Scheme and, therefore, it would be practically impossible to allot any plot, which is not available with GDA for allotment, even if it is held that allotment of plot was made by GDA in favour of the appellant. A decision of this Court in the case of *Alok Shanker Pandey vs. Union of India & Ors.* [(2007) 3 SCC 545] may be referred as it was also cited at the Bar. In that decision it has been clearly held that the amount of interest to be awarded for refund of any amount deposited by the candidate would depend upon the facts and circumstances of each case. Such being the state of affairs, we are of the view that the appellant should be allowed to get refund from the GDA the entire sum with interest at the rate of 18% not at the rate of 5% as we find that from the brochure itself, it would be clear that in the event, the appellant could not deposit the entire amount after the allotment is made within certain time, 18% interest shall be levied on the appellant. It is an admitted position that the appellant deposited the entire amount as directed by the GDA in the year 1989 and the order of cancellation of reservation of a plot in favour of the appellant was made after more than seven years and, therefore, we must hold that the respondent was liable to pay interest not at the rate of 5% but at the rate of 18%. In the facts of the present case, since the GDA had utilized the entire amount of the appellant for their own purpose till they had refunded the amount to the appellant, we confirm the order of the Commission holding that there was no "unfair trade practice", but in the facts and circumstances of the present case, we allow these appeals in part and direct the respondent to refund the money already deposited with the GDA with interest at the rate of 18 per cent and not at the rate of 5%. B  
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15. Before we conclude, we may also mention that the Commission was also justified in rejecting the claim of the H

- A appellant for allotment of a plot in Govindpuram Housing Scheme at Ghaziabad as we find the entire amount of refund with 5% interest was initially accepted by the appellant, but subsequently, as noted herein earlier, she returned the like amount to the GDA. Having accepted the amount and encashed the same, it
- B is no longer open to the appellant to turn around and claim allotment of plot from the GDA.

16. For the reasons aforesaid, the appeals are allowed only to the extent indicated above. There will be no order as to costs.

- C N.J. Appeals partly allowed.